

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

WAYNE WHALEN,)
vs.)
Plaintiff,)
vs.) Case No. 20-cv-00797-JPG
NORTHERN FREIGHT, LLC,)
AHMED SANKUS, and)
SAFARA EXPRESS, LIMITED)
LIABILITY COMPANY,)
Defendants.)

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Wayne Whalen (“Plaintiff”) Motion for Leave to file Third Amended Complaint (Doc. 71). Defendant Safara Express (“Safara”) opposes the motion (Doc. 72). Defendant Northern Freight, LLC (“Northern Freight”) and Ahmed Sankus (“Sankus”), all three collectively as (“Defendants”) join Safara’s motion (Doc. 73). Plaintiff seeks to add a party – FedEx Custom Critical, Inc.

“There is a presumption that a plaintiff should have an opportunity to test a claim on the merits,” *Lee v. N.E. Ill. Reg’l Commuter R.R. Corp.*, 912 F.3d 1049, 1052 (7th Cir. 2019), so “the court should freely give leave when justice so requires,” Fed. R. Civ. P. 15(a)(2). However, the presumption “may be overcome if the court finds . . . futility of the amendment” *Lee*, 912 F.3d at 1052–52 (cleaned up).

First, Plaintiff has filed the instant motion within the two-year statute of limitations.¹ Additionally, the Court’s current scheduling order (Doc. 66) sets a deadline of July 1, 2022, for

¹ This accident occurred on July 21, 2020.

any amendments to the pleadings. Thus, Plaintiff's motion for leave to file the amended complaint to add the party is timely. Additionally, the Court will note that any delay is caused, in part, by the fact a proper answer to the complaint by Safara did not occur until December 2021 and Safara's deposition did not occur until February 9, 2022.

Additionally, Plaintiff's proposed amended complaint articulates a basis for liability and is not futile.

The Court hereby **GRANTS** Northern Freight and Ahmed Sankus' Motion to Join the Opposition (Doc. 73), **GRANTS** Plaintiff's Motion for Leave to File Third Amended Complaint (Doc. 72), and Plaintiff is hereby **ORDERED** to file its Third Amended Complaint within 7 days entry of this Order.

IT IS SO ORDERED.
Dated: March 30, 2022

/s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE